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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/996,823	11/30/2001	Kevin Curtis	495812000100	2684	
25227 759	05/24/2004		EXAMINER		
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD			ASSAF, FAYEZ G		
SUITE 300	OCCLIAND		ART UNIT	PAPER NUMBER	
MCLEAN, VA 22102			2872		
			DATE MAILED: 05/24/2004	*	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner			Applicati ı	n No.	Applicant(s)				
Fayex G. Assaf 2872			09/996,823	3	CURTIS, KEVIN				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the period for reply specified shores is less than thing yet horizontal of 3 f CPF 1, 15 (6). In no event, however, may a reply be timely field as alse 3x(9) MONTH Sis mit he mailing date of his communication. If the period for reply specified shores is less than thing you down, a exply within the standary minimum of thing you days will be considered direacy. If the period for reply is specified shores is less than thing you down, a exply within the standary minimum of thing you days will be considered direacy. If the period for reply is specified shore, he mailing will be application to be made and the period of the period o	Offic Action Summary								
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.13(e), in no event, however, may a reply be timely fited Extensions of time may be available under the provisions of 37 CFR 1.13(e), in no event, however, may a reply be timely fited Extensions of time may be available under the provisions of 37 CFR 1.13(e), in no event, however, may a reply be timely fited Extensions of time may be available under the provisions of 37 CFR 1.13(e), in no event, however, may a reply be timely fited If the period for reply is specified above, the reasonum statutory predict will apply and will expert SIX (6) MONTHS from the mailing date of this communication. Failure to imply which is specified above, the reasonum statutory predicts will apply and will expert SIX (6) MONTHS from the mailing date of this communication, even if limely fited, may reduce any status 1) Service this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1.32 is/are pending in the application. 4a) Of the above claim(s) 17.34 is/are withdrawn from consideration. 5) Claim(s) is/are allowed. 6) Claim(s) is/are allowed. 6) Claim(s) is/are objected to. 8) Claim(s) 1.16 is/are rejected. 7) Claim(s) is/are objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. Application Papers 9) The proving specification is objected to by the Examiner. Application Papers 9) The proving specification is objected to by the Examiner. Application Papers 9) The claim(s) is/are objected to by the Examiner. 10) The drawing(s) filed on 30 November 2001 is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) Claim(s) is/are objected to be consecuted in the drawing(s) is objected to See 37 CFR 1.1		The MAILING DATE of this communication ap	1 *		1	ess			
THE MALING DATE OF THIS COMMUNICATION. Ethericore of time may be waited under the proteined of 3 CFR 1.13(6). In no event, however, may a reply be timely fitted after SX (8) MONTHS from the mailing date of this communication of 3 CFR 1.13(6). In no event, however, may a reply be timely fitted after SX (8) MONTHS from the mailing date of this communication. Provided the provided of the provided provided the provided of the provided provided by the SX (8) MONTHS from the mailing date of this communication. Falux to reply stight in the stor destended peaced for reply with, by stante, cause the application to become ABANDONED (53 U.S. 5, § 133). Any reply received by the Official error than there maint after the mailing date of this communication, even if timely fitted, may reduce any exemption and provided by the SX (8) MONTHS from the mailing date of this communication, even if timely fitted, may reduce any exemption and provided by the SX (8) MONTHS from the mailing date of this communication, even if timely fitted, may reduce any exemption and provided by the SX (8) MONTHS from the mailing date of this communication, even if timely fitted, may reduce any exemption and provided by the stanta from the mailing date of this communication, even if timely fitted, may reduce any exemption and provided by the stanta from the mailing date of this communication. 1) □ Responsive to communication (s) filled on £2 April 2004. 2a) □ This action is FINAL. 2b) □ This action is non-final. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under £x parte Quay/e, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) □ Claim(s) ± 2.34 is/are pending in the application. 4a) □ Of the above claim(s) £7.34 is/are withdrawn from consideration. 5) □ Claim(s) ± 1.34 is/are pending in the application. 4a) □ Claim(s) ± 1.34 is/are pending in the application from consideration. 5) □ Claim(s) ± 1.34 is/are pending in the applica			•		•				
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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of invention I: claims: 1-16 in the Response filed 4/2/2004 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nunzi (EPO 0453362 A1.)

Regarding claims 1, 5 and 13, Nunzi discloses a tunable optical device (see Fig. 1) comprising one or more filters (12 of Fig. 1), wherein at least one filter comprises one or more electroactive polymer, one or more photoactive materials (line 15 to line 19 of page 3 of the translated abstract), one or more grating (13 of Fig. 1).

Regarding claim 2, Nunzi discloses the grating being within the filter (se Fig. 1.)

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Regarding claim 3, Nunzi discloses the filter being in a shape of a waveguide.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4, 6-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nunzi.

Regarding claims 11, 12 and 14-16, Nunzi discloses the claimed invention including elastimer and photoactive materials (line 27 of page 1 to line 48 of page 7). However, it not clear if Nunzi discloses the claimed materials.

However, the selection of a known material based on its suitability for its intended use does not serve as basis for patentability.

It would have been obvious to one having ordinary skill in the art at the time the invention-was made to utilize any of the claimed materials, since it have been held to be within the

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ordinary skill of worker in the art to select a known material on the basis of its suitability for the intended use. One would have been motivated to use any of the claimed materials, because of its availability.

Sinclair & Carroll Co. v. Interchemical Corp., 325 U.S. 327, 65 USPQ 297 (1945).

The examiner, lacking showing to the contrary, cannot attribute any particular criticality to the disclosed materials.

Regarding claims 4 and 8, Nunzi discloses the claimed invention except for the filters being stacked together and being independently controlled.

However, such features are well known in optical devices employing fillers.

It would have been obvious, at the time was made, to a person having ordinary skill in the art to stack filters together and control them independently for the purpose of filtering for the purpose of filtering of multiplicity of wavelengths.

Regarding claims 6, 7, 9, and 10, the combination discloses such features as result of the proper choice of materials.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yamada et al. (US 5,185,829)

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fayez G. Assaf whose telephone number is (571) 272-2307. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fayez G. Assaf

Examiner

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